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**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
**MOBILEMEDIA CORPORATION, et al.** )  
)  
Applicant for Authorizations and Licensee )  
of Certain Stations In Various Services )

WT DOCKET NO. 97-115

To: Honorable Joseph Chachkin  
Administrative Law Judge

**WIRELESS TELECOMMUNICATIONS BUREAU'S**  
**MOTION FOR WAIVER OR FOR EXTENSION OF DEADLINE**

1. The Acting Chief, Wireless Telecommunications Bureau (Bureau), by his attorneys, requests that the Presiding Judge either waive the twenty-one day notice requirement of Section 1.315(a), or, in the alternative, extend the deadline for completing discovery in this proceeding from May 27, 1997 to June 5, 1997.

2. This relief is requested so that the Bureau may take the depositions noticed in the "Notice of Depositions" being filed concurrently with this motion. Section 1.315(a) of the Commission's rules normally requires that twenty-one days notice be given before a deposition can be taken. The twenty-one day requirement, if strictly applied to the individuals being noticed today, would require that their depositions be taken after the deadline set by the Presiding Judge for completing discovery. Order Prior to Prehearing Conference, FCC 97M-61 (released April 21, 1997). Thus, in order for the Bureau to take depositions, the Presiding Judge must either waive the twenty-one day notice provision, or extend the deadline for

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completing discovery. The Bureau submits that the public interest in expedited disposition would best be accomplished by waiving the twenty-one day notice provision.

3. Good cause exists for a grant of this motion. The Bureau is responsible for developing a complete record on each of the designated issues. It has to marshal the large amount of existing evidence in its possession, prepare a great deal of direct case testimony, conduct necessary discovery, and be prepared to conduct cross-examination in a very short period of time. To develop a full and complete evidentiary record in conformance with the expedited schedule demanded by the Commission, the parties require the flexibility to use every available moment to prepare for trial. The Presiding Judge acknowledged as much at the May 6 prehearing conference, when he stated his willingness to adjust discovery dates, provided the hearing date remained intact. Tr. 63.

4. Each of the deponents have information which is calculated to lead to the discovery of relevant and admissible evidence. Four of the deponents are attorneys who assisted in the preparation of the Report to the Commission that is central to several of the issues designated in this proceeding. Immediately after designation, the Bureau filed a motion seeking clarification of the scope of Issue (b), to wit:

(b) to determine the facts and circumstances surrounding MobileMedia's submission of its October 15, 1996 Report to the Bureau (including, but not limited to, the identity of all persons who participated in the preparation of the Report and the nature and extent of their participation, including their intent) and whether MobileMedia knowingly made false statements, engaged in misrepresentations, lacked candor, or willfully or repeatedly violated Section 1.17 of the Commission's Rules with regard to the submission of the October 15, 1996, Report to the Bureau.

On May 5, 1997, the Commission released an Order which, for the first time, made clear that

testimony from the lawyers who were involved in preparing the report will be essential to resolve Issue (b). Order, FCC 97-152 (released May 5, 1997). The Bureau only learned of the Order on May 6, 1997, during the prehearing conference. Yesterday, the Bureau met informally with counsel for MobileMedia and inquired whether the attorneys would be made available on less than twenty-one days notice. Counsel for MobileMedia informed the Bureau that they would not agree to either a waiver of the twenty-one day notice provision, or an extension of the discovery deadline. The Bureau is therefore filing this motion as expeditiously as possible.

5. The remaining deponents are MobileMedia employees who were involved in filing or had direct knowledge of the applications or facilities in question. Colleen Pinkerton is an office manager, and Mary Brooks is a paralegal, employed by MobileMedia, both of whom were involved in preparing at least some of the applications that contained misrepresentations. Ted Tuterow was listed in MobileMedia's organizational chart in October 1996 as "Manager, FCC", and documents show that he was responsible for preparing (at a minimum) the "40-mile" applications which are at issue in this proceeding. Todd Wheeler was only recently identified by MobileMedia as the person who allegedly "recounted informally questioning the propriety of the inaccurate filings with the Chief Operating Officer, noting that the practice was contradictory to his experience at BellSouth." Report, p. 14. Greg Cisewski was in charge of the department that oversaw actual construction of MobileMedia's stations, and would therefore have knowledge of MobileMedia's procedures and the status of the stations at issue. Peter Karamolengos is a regional manager who was directly involved in the process of constructing stations and reporting on the status of stations to be constructed. To the best of

the Bureau's knowledge, each of these persons are still employees of MobileMedia. The Bureau wishes to depose these individuals to ascertain their knowledge of the facts and circumstances at issue. None of these individuals was interviewed as part of the Bureau's pre-designation investigation.

6. Allowing the depositions to take place before the hearing would likely expedite the actual hearing. If depositions are taken and the Bureau determines that an individual's hearing testimony would not be needed to develop a complete record, the Bureau would not call that individual as a witness at hearing. If these individuals are not deposed, however, the Bureau currently believes that each of these individuals would have to be called to testify at hearing to develop a complete record. Depositions would therefore allow the Bureau to make an informed judgment as to which witnesses - including the named attorneys - need to testify at hearing and to shorten the necessary examination of each witness whose testimony was required.

7. Under Section 1.315(b)(1) of the Commission's rules, MobileMedia would normally have seven days to file an objection. The Presiding Judge may wish to consider imposing a compressed deadline for the filing of any objections or calling a prehearing conference to consider any objections. The Bureau will file a reply to any objection filed by MobileMedia within 2 business days (assuming MobileMedia hand serves its objections). If the Presiding Judge agrees that it would be appropriate to have the depositions taken on less than twenty-one days notice, the Bureau will cooperate as needed to assist the Presiding Judge in ruling in an expedited fashion.

8. If the Presiding Judge determines that it would not be appropriate to waive the twenty-one day notice provision, the Bureau requests that the Presiding Judge waive the deadline for completing discovery to allow the Bureau to take the depositions on twenty-one days notice. The benefit in ensuring a complete record and expediting the hearing would outweigh any minor extension of the discovery deadline. The Bureau assures the Presiding Judge that it is committed to being ready to commence the hearing on June 10. A grant of this motion would greatly aid the parties in preparing for the hearing.

Accordingly, the Bureau asks that the Presiding Judge either waive the twenty-one day notice provision of Section 1.315(a) of the Commission's Rules, or that the Presiding Judge extend the discovery deadline to allow the taking of the depositions being noticed this date.

Respectfully submitted,

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May 9, 1997

## **CERTIFICATE OF SERVICE**

I, John J. Schauble, an attorney in the Enforcement Division, Wireless Telecommunications Bureau, certify that I have, on this 9th day of May 1997, sent by hand delivery or facsimile, copies of the foregoing, "Wireless Telecommunications Bureau's Request for Waiver or for Extension of Deadline" to:

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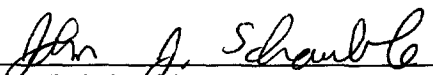
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